

REMARKS**Status of the Claims**

Upon entry of the amendment above, claims 19-64 will be pending, claims 19, 36, 57, and 61 being independent.

Summary of the Office Action

As indicated on the cover page, the Examiner has acknowledged the priority claim and receipt of the certified copy of the priority application. In addition, as evidenced by the Examiner-initialled PTO-1449 form, the Examiner has acknowledged his consideration of our previously filed information disclosure statement. In addition, the Examiner has declared the originally filed drawings as having been "accepted."

Claims 19-37 are rejected under 35 USC §112, second paragraph, as being indefinite. See paragraph 2 on page 2 of the Office action.

Claims 19-24, 28, 29, 32, 34, and 36 are rejected under 35 USC §102(b) as being anticipated by COCHRANE (U.S. Patent No. 5,269,078). See paragraph 4, beginning on page 2 of the Office action.

Claims 19, 20, and 31 are rejected under 35 USC §102(b) as being anticipated by SALOMON (U.S. Patent No. 4,160,332). See paragraph 5, beginning near the bottom of page 3 of the Office action.

Claims 19, 20, 23, and 24 are rejected under 35 USC §102(b) as being anticipated by YOUNG (U.S. Patent No. 1,650,000). See paragraph 6, on page 4 of the Office action.

Claims 26 and 27 are rejected under 35 USC §103(a) as being unpatentable over COCHRANE or YOUNG (i.e., "over the references as applied to claim 24 above") in view of

French Patent Publication No. 2 615 074, hereinafter "FR '074"). See paragraph 8, on page 5 of the Office action.

Claims 25, 30, and 37 are rejected under 35 USC §103(a) as being unpatentable over COCHRANE or YOUNG (i.e., "over the references as applied to claim 24 above") in view of BERGERON (U.S. Patent No. 5,832,632). See paragraph 9, beginning near the bottom of page 5 of the Office action.

Claims 33 and 35 are rejected under 35 USC §103(a) as being unpatentable over COCHRANE alone. See paragraph 10, on page 6 of the Office action.

Response to the Office Action

A. Miscellaneous

Initially, Applicants are grateful for the Examiner's consideration of the information disclosure statement, as well as for the Examiner's acknowledgement of Applicants' claim of priority and receipt of the certified copy thereof.

B. Withdrawal of Rejection Under 35 USC §112, Second Paragraph

Applicants kindly request that the rejection for alleged indefiniteness, under 35 USC §112, second paragraph, be reconsidered and withdrawn in view of amendments made thereto and the following remarks.

For example, in claim 19, the expression "boot" has been changed to "article of footwear" for consistency within the claim.

In claim 21, Applicants submit that the expression "the flexion fold of the foot" is not vague or indefinite. The flexion fold of the foot is an area of the foot shown, e.g., in the drawings with respect to the position of the portion S1 of the retention band 1. Further,

Applicants submit that those skilled in the art recognize the flexion fold of the foot to be the area of the intersection of the foot and the lower leg. The "fold" is that which is made when the leg is bent relative to the foot and is positioned approximately in the area above the scaphoid (i.e., the navicular) and cuboid bones of the foot.

Of course, as the Examiner has suggested, the boot also has a fold facing the fold of the foot. In claim 19, the flexion fold mentioned is an area of the article of footwear. In any event, Applicants submit that the claims are sufficiently clear to enable one of ordinary skill in the art to understand their scope and meaning.

C. Withdrawal of Rejections Based Upon COCHRANE, Alone or in Combination

Applicants kindly request reconsideration and withdrawal of the above-mentioned grounds of rejection under 35 USC §102(b) and §103(a) based upon COCHRANE, considered alone or in combination with additional reference(s).

COCHRANE discloses a boot, which could be used for skiing or other activities (column 3, lines 34-57), having an inner tightening apparatus 10 which is comprised of six straps that surround various parts of the foot. It appears that the straps are attached to the interior of the upper of the boot, these straps being positioned between the inner surface of the upper and a lining 63.

The Examiner mentions (near the bottom of page 2 of the Office action) that areas shown as "X's" in Figs. 1 and 2 of COCHRANE are anchoring points (points 78, 88, 98, 108, 118, 128, 131 --- see column 5, lines 49-54). However, there appears to be no single strap of the six straps of COCHRANE which extends in the manner specified in Applicants' claims.

At the end of Applicants' claim 19, it is specified "said retention band partially

surrounding a foot of a wearer ... in a flexion fold area and extending from said flexion fold area in a direction toward a heel of the foot." Claim 19 thereby refers to a retention band which (1) extends in a direction from the flexion fold toward the heel and (2) is attached at the lateral and medial sides of the upper.

The retention band of Applicants' claimed invention is effective for retaining the foot within the article of footwear by pressing the foot, in the area of the flexion fold, against the rear of the inner surface (see element Oa in the drawings, e.g.) of the upper (O) and the sole (100), as explained, e.g., in paragraph [0014] of the specification of the instant application.

Applicants respectfully submit that none of the straps of the boot of COCHRANE are relevant to Applicants' invention. All of the straps 76, 86, 96, 106, 116, 126 are connected together to make the force-applying assembly 75, as described from column 4, line 59, to column 5, line 54.

Further, Applicants submit that what is important to notice is that the force-applying assembly 75 of COCHRANE exerts evenly distributed pressure on the outside of the foot and ankle, thereby drawing it toward the inner side portion 17, so as to grasp the foot and ankle in a manner most comfortable to the wearer and with the optimum support while cooperating with the anatomical structure and natural flexure of the muscles, tendons, ligaments, and bones of the foot and ankle. See, in this regard, column 6, lines 16-24 of COCHRANE.

COCHRANE's first strap 76 (see column 4, line 64) is fixed to the sole and the second strap 86 (column 5, lines 4-5) is attached to the interior of the upper above the sole (see Fig. 3). It seems clear in Figs. 1-3 of COCHRANE that the straps 76, 86 do not extend toward the heel, but that they extend to a point in front of the heel.

By contrast, Applicants' claim 19 specifies that the portion of the retention band (see, e.g., portion S1 in the drawings) extends toward the heel.

Similarly, claim 36, rewritten in independent form and directed to an article of footwear which includes the inner tightening mechanism, similar to that recited in claim 19, also calls for a portion of the retention band that extends from the flexion fold to the heel.

In new independent claim 57, Applicants call for "said portion of said retention band being positioned along a plane extending substantially through a flexion fold area of the foot of a wearer, through said anchoring point, and through a heel of the foot of a wearer." Again, COCHRANE fails to teach or suggest such a limitation.

At least for the foregoing reasons, reconsideration and withdrawal of the rejections based upon COCHRANE, alone or in combination with other reference(s), are requested.

Claims 33 and 35 are rejected under 35 USC §103(a) as being unpatentable over COCHRANE alone, as mentioned in paragraph 10, on page 6 of the Office action.

These two claims refer to distinct subject matter for which the Examiner has taken the position that COCHRANE does not clearly disclose, although he has taken the position that a modification of COCHRANE would have been obvious.

Claim 33 refers to the arms of claim 32 (see, for example, arms 16, 17 in Applicants' Figs. 5, 6), which are fixed to the upper on the medial side of the boot. In the rejection it is simply stated that it would have been obvious to fix such arms on either side.

First, COCHRANE fails to teach or suggest a retention band having a two-armed fork, as specified in parent claims 23 and 32.

Concerning claim 33, COCHRANE comprises a force-applying system 75 with

distributes pressure on the outside of the foot and ankle, drawing it toward the inner side portion 17 of the boot (see column 6, lines 16-24). The system 75 has the general appearance of a cobweb, which does not suggest Applicants' claimed invention.

Claim 35 is directed to the upper including a housing (such as housing 30 in Applicants' Fig. 3) for housing the slide/return. The Examiner states that the housing of COCHRANE "would be the slit in the upper in which the band passes through."

Applicants respectfully submit that the rejection appears to have been based upon less than a complete understanding of the subject matter to which claim 35 is directed. Claim 35 specifies that the housing is on the inner surface of the upper and that the slide/return is housed in such housing. Note paragraph [0029] of Applicants' specification and Fig. 3 of Applicants' drawing, for example. In any event, the specified relationships do not appear to be addressed in the rejection.

Although Applicants submit that the rejections which are at least partially based upon the disclosure of COCHRANE should be withdrawn at least for the reasons given above, Applicants offer the following comments regarding the combination of COCHRANE and FR '074 and the combination of COCHRANE and BERGERON.

The goal of FR '074 is to allow one to modify very quickly the tightening of the shoe by using only one hand at only one place and without losing time (see page 1, lines 3-7). This goal is very different from that of Applicants' invention. Further, the bands of FR '074 press the foot against the sole, not toward the rear of the inner surface of the upper. In short, Applicants submit that FR '074 would direct one skilled in the art in a direction away from their invention.

It appears to have been the Examiner's intention, in relying upon BERGERON, to address the feature of the "raised elements" (such as elements 10, 11 in Fig. 8) of Applicants' invention. Claims 30 and 37 include this subject matter.

As described in the specification directed to the embodiment of Fig. 8 of Applicants' application, the "raised elements" of claims 30 and 37, upon which the retention band is supported, provide for relieving pressure at the top of the foot that would otherwise be applied by the retention band if such elements are omitted.

For this limitation, the Examiner has relied upon BERGERON as allegedly suggesting a modification of the boot of COCHRANE. Applicants do not readily appreciate the Examiner's argument. It is explained in the Office action that BERGERON discloses a shoe placed within a boot, whereby the shoe has raised sections "the side edges of the shoe where the laces are located" (line 1 on page 6 of the Office action), would suggest a modification of the COCHRANE boot to meet the terms of claims 30 and 37. However, COCHRANE already includes an inner lining 63. Applicants submit that one would not be motivated to have additionally relied upon the disclosure of BERGERON. BERGERON is directed to an oversized wading boot having a shoe attachment system, as explained at column 1, lines 6-8. The boot comprises a securing strap unit (see column 2, lines 18-22), which allow the user to traverse "boot-sucking" terrain (see column 3, lines 6-12). The wading boot construction 10 allows a user to easily insert a boot or other footwear 100 into the confines of the boot member 20 (see column 2, line 64, to column 3, line 5). Accordingly, BERGERON teaches how to encase one boot into another. The teaching is far removed from the invention.

D. Withdrawal of Rejection Based Upon SALOMON

Applicants kindly request reconsideration and withdrawal of the above-mentioned ground of rejection under 35 USC §102(b) based upon SALOMON.

In this regard, claims 19, 20, and 31 are rejected under 35 USC §102(b) as being anticipated by SALOMON, as explained in paragraph 5, beginning near the bottom of page 3 of the Office action.

Applicants note that this ground of rejection might have been advanced for the purpose of rejecting claim 31, inasmuch as claim 31 was not rejected on the basis of COCHRANE. In fact, the only rejection of dependent claim 31 is based upon SALOMON.

Claim 31 includes a recitation of a one of the anchoring points (note, e.g., point 22 in Applicants' exemplary embodiments shown in Figs. 1-3) including a "sliding return" (element 5 in Figs. 1-3) for the retention band, which fixes the retention band, and a distribution plate (such as plate 13 in the embodiment of Fig. 9).

Initially, Applicants note that, in contrast to Applicants' claims 19 (and new claims 38 and 39, e.g.) SALOMON is directed to a ski boot having a rigid shell, whereas the invention specified in the aforementioned claims is intended for a boot having a flexible or semi-rigid upper. That is, the rejection includes an identification of the shell 17 of SALOMON as "a flexible or semi-rigid upper 17" (see paragraph 5, line 3, at the bottom of page 3 of the Office action).

Further, regarding claim 31 (which encompasses, e.g., the embodiment of Fig. 9), the article of footwear of the invention is an inner boot CH' and the band 1 is fixed to a rigid outer structure 202. However, the rejection could not properly rely upon flexible inner boot 12 of SALOMON as constituting the article of footwear of Applicants' claims because the retention band of SALOMON is fixed to the outside of the flexible inner boot 12, not the inside as

specified in Applicants' claims.

Further, in SALOMON the bands 8, 8' each have one end secured to each of the base of the shell at points 10, 10', the other ends of the bands being secured to a cable 3 (see column 4, lines 18-24). The cable 3 is connected to a spoiler 6 hinged to base 9 of the shell (see column 4, lines 7-13). As it pivots, the spoiler applies tension to the cable 3, and the bands 8, 8' apply pressure to the instep through the distributor plate 1 (see column 4, lines 41-43). Accordingly, SALOMON discloses an inner tightening mechanism, the structure and the function of which are completely different from that of Applicants' invention.

At least for the reasons given above, reconsideration and withdrawal of the rejection based upon SALOMON are requested.

E. Withdrawal of Rejections Based Upon YOUNG, Alone or in Combination

Applicants kindly request reconsideration and withdrawal of the above-mentioned grounds of rejection under 35 USC §102(b) and §103(a) based upon YOUNG, considered alone or in combination with additional reference(s).

Applicants submit that the rejection(s) over YOUNG is(are) based upon a rather unusual interpretation. YOUNG discloses a shoe having a pair of elastic strips 5, 6 which are attached to the inner surfaces of the sides of a shoe. As the foot is placed into the shoe, the foot presses down on the strips 5, 6, which forces the sides of the shoe to "hug or fit closely against the sides of the foot" (see page 1, lines 10-15; see also page 2, lines 29-38; and page 2, lines 84-89).

Only in an unusual way, a way inconsistent with the limitations of the rejected claims, Applicants respectfully submit, can it be maintained that the elastic bands of YOUNG are a "tightening mechanism". In contrast to their claim 19, Applicants submit that the bands of YOUNG cannot be said to "surround the foot of the wearer". Further, Applicants submit that it cannot properly be said that the bands of YOUNG extend in a direction from the flexion fold

to the heel.

At least for the foregoing reasons, reconsideration and withdrawal of the rejections based upon YOUNG are requested.

F. Summary of New Claims

As mentioned above, Applicants have added new claims 38-64, of which claim 57 is independent. Claims 38-56 depend, directly or indirectly, from independent claim 36. Included in these dependent claims is subject matter that relates to subject matter that appears in dependent claims 20-35.

Independent claim 57 is directed to "An article of footwear," and is similar in certain respects to claim 36. However, there are differences. For example, the tightening mechanism is described as "applying at least a downwardly directed force upon the foot toward said sole and sidewardly directed forces upon the foot at said lateral and medial sides of said upper." In this regard, note Applicants' Fig. 3 and the schematically illustrated forces F4, F3, and F2, as well as paragraphs [0019]-[0025] of Applicants' specification.

In addition, the recitation of the retention band in the final subparagraph of claim 57 calls for the retention band to include a portion that is "fixed with respect to said inner surface of said upper at an anchoring point at one of said two sides of said upper, said portion of said retention band extending from said anchoring point, across a top of the foot of a wearer, to a second of said two sides of said upper, said portion of said retention band being positioned along a plane extending substantially through a flexion fold area of the foot of a wearer, through said anchoring point, and through a heel of the foot of a wearer."

Dependent claim 58 further includes the limitation of an "inner boot positioned beneath said upper and beneath said tightening mechanism."

Dependent claim 59 calls for the upper to be flexible, while claim 60 provides for an

alternative manner by which reference to the non-rigidity of the upper is described. Specifically, in claim 60, Applicants recite the following: "each of said lateral and medial sides of said upper includes a respective portion having a tensioned position and a non-tensioned position, said tensioned positions of said lateral and medial sides of said upper being inward toward the foot of the wearer relative to said non-tensioned positions of said lateral and medial sides of said upper."

Dependent claim 61 adds the limitation referring to a "sliding return" (see, e.g., element 5 in Applicants' drawing), "said sliding return fixed to said inner surface of said upper at a second of said two sides of said upper at a second anchoring point, and wherein said retention band passes in said sliding return and extends upwardly from said sliding return to thereby provide access to said retention band to have said downwardly and sidewardly directed forces applied."

Dependent claim 62 calls for at least one of the anchoring points to be spaced above the sole, and dependent claim 63 calls for both of the anchoring points to be spaced above the sole.

Finally, dependent claim 64 calls for "both of said anchoring points are positioned substantially at a center of a line connecting a base of the heel of the wearer to the flexion fold of the foot of the wearer." As explained in the specification (see paragraph [0019], this location of the anchoring points provides for the advantageous use of the flexibility of the upper of the article of footwear for lateral retention of the foot.

SUMMARY AND CONCLUSION

The grounds of rejection advanced in the Office action have been addressed and are believed to be overcome. Reconsideration and allowance are respectfully requested in view of the amendment and remarks above.

Any amendments to the claims presented above, which have not been specifically noted

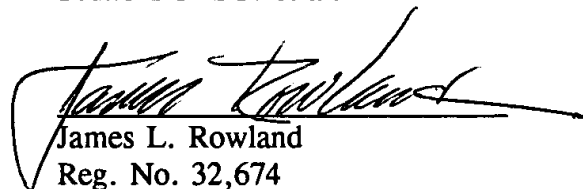
to overcome a rejection based upon prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach to such amendments.

A check is enclosed for payment of a claim fee. No additional fee is believed to be due at this time. However, the Commissioner is authorized to charge any fee required for acceptance of this reply as timely and complete to Deposit Account No. 19-0089.

Further, although no extension of time is believed to be necessary at this time, if it were to be found that an extension of time were necessary to render this reply timely and/or complete, Applicants request an extension of time under 37 CFR §1.136(a) in the necessary increment(s) of month(s) to render this reply timely and/or complete and the Commissioner is authorized to charge any necessary extension of time fee under 37 CFR §1.17 to Deposit Account No. 19-0089.

Any comments or questions concerning this application can be directed to the undersigned at the telephone or fax number given below.

Respectfully submitted,
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VERSION OF AMENDMENTS WITH MARKINGS TO SHOW CHANGES MADE**In the Claims**

19. (Amended) An inner tightening mechanism adapted to equip an article of footwear having a flexible or semi-rigid upper mounted on a sole, said tightening mechanism comprising:

a retention band connected to the inner surface of the upper by at least two anchoring points fixed on lateral and medial sides, respectively, of the upper, at least a portion of said retention band partially surrounding a foot of a wearer of the article of footwear [boot] in a flexion fold area and extending from said flexion fold area in a direction toward [of] a heel of the foot.

24. (Amended) An inner tightening mechanism according to claim 19, wherein a second portion of the retention band, which is comprised between a sliding return and an end of the retention band, includes a fixing device [attachment mechanism] capable of maintaining tension in the tightening mechanism.

27. (Amended) An inner tightening mechanism according to claim 24, wherein the inner surface of the upper includes a fixing device [an attachment mechanism] that is complementary to the fixing device of the second portion of the retention band [previously cited attachment mechanism].

28. (Amended) An inner tightening mechanism according to claim 24, wherein said fixing device [attachment mechanism] is a self-gripping type.

29. (Amended) An inner tightening mechanism according to claim 19, wherein one of said anchoring points includes a sliding return, and the retention band, which is fixed at an end to a second of said anchoring points, passes in the sliding return by defining a portion which

covers the foot, and wherein the retention band includes a gripping device [mechanism] that is arranged on said portion and which enables the loosening of the inner tightening mechanism.

30. (Amended) An inner tightening mechanism according to claim 19, wherein the article of footwear is equipped with an inner shoe which includes at least two raised [raising] elements that are fixed on the lateral side and on the medial side, respectively, of the inner shoe, and wherein the retention band is supported [takes support especially] on the raising elements.

36. (Amended) An article of footwear [equipped with the inner tightening mechanism according to claim 19] comprising:

a sole;

an upper mounted on said sole, said upper having a lateral side, a medial side, and an inner surface;

a tightening mechanism for retention of a foot in position within said article of footwear, said tightening mechanism comprising:

a retention band fixed with respect to said inner surface of said upper at at least two anchoring points, a first of said anchoring points being on said lateral side of said upper and a second of said anchoring points being on said medial side of said upper, at least a portion of said retention band at least partially surrounding a foot of a wearer of the boot in a flexion fold area and extending in a direction toward a heel of the foot.

37. (Amended) An article of footwear according to claim 36, further comprising an inner shoe, said inner shoe including [which includes] at least two raised [raising] elements, a first of said raised elements being [that are] fixed on a [the] lateral side of said inner shoe and a second of said raised elements being fixed on a [on the] medial side of said inner shoe, [respectively, of the inner shoe, and wherein the] said retention band taking [takes] support [especially] on said raised [the raising] elements.